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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact: \_\_\_\_\_, ID No. \_\_\_\_\_

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Refer Reply To:  
CC:TEGE:EOEG:EO1  
PLR-141532-12

Date:  
December 10, 2012

Entity:

Trustee:

Board:

### Agreement:

State:

Date 1:

Date 2:

Statute:

Dear \_\_\_\_\_ :

This letter responds to a letter from your authorized representative dated September 21, 2012, submitted on behalf of the Trust, requesting a ruling that the Trust's income is excludable from gross income under § 115 of the Internal Revenue Code. The Trust represents the facts as follows.

## FACTS

The Entity maintains health plans through which its retirees and their eligible spouses and dependents may obtain medical and prescription drug benefits (post-employment benefits other than pension benefits, or OPEB) pursuant to the Statute.

The Trust was established by the Entity to fund the post-employment benefits provided by the health plans. It was adopted by the Trustee, the Entity, and the Board on Date 1 and was effective Date 2. Contributions to the Trust are irrevocable, and the amount of such contributions is determined by the Entity or State. No employee contributions currently are being made to the Trust.

The Trust may participate under § 401(a)(24) in a qualified group trust that meets the requirements of § 401(a).

The Trustee is responsible for holding, investing, and reinvesting Trust assets, and for making payments from the Trust, on the order of the Entity and the Board or their authorized representative, for the benefit solely of Entity retirees and their eligible spouses and dependents.

The Trustee may set up sub-trusts or accounts within the Trust for appropriate categories of retirees (separate accounts for participants will not be maintained). With the approval of the Entity and the Board, the Trustee, *inter alia*, may make, amend, or rescind regulations with respect to the Trust; may adopt and amend investment policies, guidelines, restrictions, and requirements; and may engage consultants to assist in maintaining and operating the Trust.

The Agreement may be amended by the Entity and the Board at any time and in any manner permitted by state law and not inconsistent with applicable accounting standards and the Internal Revenue Code.

The Trust may be dissolved by the Entity and the Board. Upon such dissolution, and after payment of, or provision for, all Trust liabilities, including reasonable fees and expenses, the Trustee shall distribute any remaining assets for the sole benefit of the retirees and their eligible spouses and dependents. The Agreement provides that in no event will Trust assets be distributed or revert to any entity that is not a state, a political subdivision of a state, or an entity the income of which is excluded from its gross income by § 115.

## LAW AND ANALYSIS

Section 115(1) provides that gross income does not include income derived from any public utility or the exercise of any essential government function and accruing to a state or any political subdivision thereof.

In Rev. Rul. 77-261, 1977-2 C.B. 45, income from an investment fund, established under a written declaration of trust by a state, for the temporary investment of cash balances of the state and its participating political subdivisions, was excludable from gross income for federal income tax purposes under § 115(1). The ruling indicated that the statutory exclusion was intended to extend not to the income of a state or municipality resulting from its own participation in activities, but rather to the income of a corporation or other entity engaged in the operation of a public utility or the performance of some governmental function that accrued to either a state or municipality. The ruling points out that it may be assumed that Congress did not desire in any way to restrict a state's participation in enterprises that might be useful in carrying out projects that are desirable from the standpoint of a state government and which are within the ambit of a sovereign properly to conduct. In addition, pursuant to § 6012(a)(2) and the underlying regulations, the investment fund, being classified as a corporation that is subject to taxation under subtitle A of the Code, was required to file a federal income tax return each year.

In Rev. Rul. 90-74, 1990-2 C.B. 34, the income of an organization formed, funded, and operated by political subdivisions to pool various risks arising from their obligations regarding public liability, workers' compensation, or employees' health is excludable from gross income under § 115. In this ruling, private interests did not materially participate in the organization, nor did they benefit more than incidentally from the organization.

The Trust provides health benefits to retired Entity employees and their eligible spouses and dependents. Providing such benefits to former public employees constitutes the performance of an essential government function within the meaning of § 115(1). See Rev. Rul. 90-74 and Rev. Rul. 77-261.

The funding and provision of retiree OPEB benefits through the Trust satisfies the obligation of the Entity to provide those benefits; thus, the income of the Trust accrues to the Entity, a political subdivision of the State. No private interests participate in, or benefit from, the operation of the Trust other than as providers of goods or services. The benefit to retired employees of the Entity is incidental to the public benefit. Upon termination of the Trust, any remaining assets will be used to provide health benefits to retirees pursuant to the Entity's health plans. In no event will Trust assets be distributed to any entity that is not a state, a political subdivision of a state, or an entity the income of which is excluded from gross income under § 115. See Rev. Rul. 90-74.

## RULING

Based solely on the facts and representations submitted by the Trust, we conclude that the income of the Trust is derived from the exercise of an essential governmental function and will accrue to a state or a political subdivision thereof for purposes of § 115(1). Consequently, we rule that the Trust's income is excludable from gross income under § 115(1).

Except for the specific ruling above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, no representation is made that contributions or premiums paid on behalf of, or benefits received by, employees, former employees, retirees, spouses, dependents, or others will be tax-free. This ruling concerns only the federal tax treatment of the Trust's income and may not be cited or relied upon as to any matter relating to the taxation of accident or health contributions or benefits.

Under a power of attorney on file with this office, we are sending copies of this letter to your authorized representatives.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Sincerely,

SYLVIA HUNT  
Assistant Chief  
Exempt Organizations Branch 2  
Office of Division Counsel /  
Associate Chief Counsel  
(Tax Exempt & Government Entities)

enclosures: copy for § 6110 purposes

cc: